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ENDORSED
FILED
ALAMEDA COUNTY

DEC 26 2001

CLERK OF THE SUPERIOR COURT
By S.E. Smith, Deputy

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7 SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF ALAMEDA - NORTHERN DIVISION

8 MYRON A. SMITH,

2001-035547

NO.

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Plaintiff,

COMPLAINT FOR PERSONAL
INJURIES; VIOLATION OF
CIVIL RIGHTS

vs.

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12 CITY OF OAKLAND, D. KEELY,
I. MAYER, Sgt. REILEY, and
DOES 1 - 50,

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Defendants.

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PLAINTIFF MYRON A. SMITH alleges:

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I. PARTIES

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1. Plaintiff MYRON A. SMITH is, and at all times alleged
herein was, a resident of Oakland, Alameda County, California.

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19 2. Defendant City of Oakland is a municipality, whose
20 principal place of business is Oakland, California, and which
21 operates a police department known as the Oakland Police
22 Department. Said municipality has the capacity to sue and be
23 sued.

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25 3. Three peace officers whose identity currently is only
partially known, are named herein as "D. KEELY, I. MAYER, Sgt.
26 REILEY." Said peace officers are employed by the Oakland Police
27 Department, and at all times alleged herein were so employed.

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1 4. All other defendants whose identities are currently
2 unknown to plaintiff, but who are employed by the Oakland Police
3 Department, are among the fictitiously-named DOE defendants.
4 The defendants sued as DOES 1 to 50 are sued herein under
5 fictitious names because their true names, capacities and/or
6 degree of responsibility for the acts alleged herein are unknown
7 to plaintiff at this time. When plaintiff is able to ascertain
8 this information, plaintiff will amend this Complaint accordingly.
9 Plaintiff is informed and believes and alleges that each of the
10 defendants are legally liable to plaintiff in some part for the
11 wrongful acts and omissions of which plaintiff complains herein.

12 5. Plaintiff is informed and believes and alleges that all
13 times herein mentioned each and every defendant was the agent,
14 servant, employee and/or representative of each and every other
15 defendants and, in doing the things complained of herein, was
16 acting within the scope of that agency, service, employment,
17 and/or representation, and that each and every defendant herein is
18 jointly and severally responsible and liable to plaintiff for the
19 damage hereafter alleged.

20 II. FACTS COMMON TO ALL CAUSES OF ACTION

21 6. On or about January 28, 2001, plaintiff MYRON A. SMITH
22 was driving his automobile in a line of traffic on a surface
23 street near the 8300 block of Baldwin, in Oakland, California.

24 7. Defendants, and each of them, stopped the car driven by
25 plaintiff, and ordered him to turn around. There was not
26 sufficient room, due to road and traffic conditions, for plaintiff
27 to comply with this order. Defendants, and each of them, ignored

1 plaintiff's request that they either move their car or the car
2 behind plaintiff so that plaintiff could comply. At least one
3 Oakland police officer pulled his weapon out and ordered plaintiff
4 to exit his vehicle. When plaintiff hesitated, out of concern for
5 his safety, the defendants then began to try to pull plaintiff
6 from his car without allowing him to unbuckle his seat belt,
7 sprayed mace on plaintiff, and used force and violence against
8 plaintiff after he had been maced and was not resisting officers.
9 The defendants then arrested plaintiff and charged him with
10 violations of Vehicle Code sections 21367, 2800 and 12951(B); and
11 violations of Penal Code sections 148 and 1203.2(a). The
12 defendants also seized a videocamera and videotape belonging to
13 plaintiff, which had been used by an occupant of plaintiff's car
14 to record the actions of the defendants. The defendants then
15 delayed providing charging allegations to the Alameda County
16 District Attorney, after plaintiff had been placed in custody, so
17 that plaintiff remained in custody against his will without being
18 taken before a magistrate for more than 72 hours. Plaintiff was
19 incarcerated from approximately 4:00 a.m. on January 28, 2001
20 until the late evening of February 1, 2001. Plaintiff was
21 compelled to hire a lawyer to file a petition to obtain a court
22 order to release him from custody.

23 8. Plaintiff did nothing to warrant being placed under
24 arrest in this manner, and did not physically resist officers
25 prior to being attacked in his car, maced, then thrown to the
26 ground or being handcuffed. After restraining plaintiff, said
27 defendants beat plaintiff about the face and body, and

1 intentionally humiliated plaintiff in the presence of his friends
2 and other persons who gathered to watch.

3 9. A Notice of Claim was presented to the City of Oakland
4 on June 22, 2001, and was denied on June 29, 2001.

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III

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FIRST CAUSE OF ACTION

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FALSE ARREST - FALSE IMPRISONMENT

9 10. Plaintiff realleges and incorporates herein, by
10 reference, paragraphs 1 through 9 inclusive.

11 11. As the direct and proximate result of the acts of the
12 defendants alleged herein, plaintiff has suffered great bodily
13 harm, great physical and emotional pain and suffering,
14 humiliation, extreme and severe mental anguish, acute anxiety,
15 emotional and physical distress, fear, depression, all to his
16 detriment and damage.

17 12. The above-described conduct of the defendants and each
18 of them constitutes false arrest and false imprisonment.

19 WHEREFORE plaintiff prays for relief as set forth below.

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SECOND CAUSE OF ACTION

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ASSAULT AND BATTERY

23 13. Plaintiff realleges and incorporates herein, by
24 reference, paragraphs 1 through 9 inclusive, and paragraph 11.

25 14. The above-described conduct of the defendants and each
26 of them constitutes assault and battery upon plaintiff.

27 WHEREFORE plaintiff prays for relief as set forth below.

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COMPLAINT

THIRD CAUSE OF ACTION

INTENTIONAL INFILCTION OF EMOTIONAL DISTRESS

15. Plaintiff realleges and incorporates herein, by reference, paragraphs 1 through 9 inclusive, and paragraph 11.

16. The above-described conduct of the defendants and each of them constitutes the intentional infliction of emotional distress upon plaintiff.

WHEREFORE plaintiff prays for relief as set forth below.

FOURTH CAUSE OF ACTION

INVASION OF PRIVACY

17. Plaintiff realleges and incorporates herein, by reference, paragraphs 1 through 9 inclusive, and paragraph 11.

18. The above-described conduct of the defendants and each of them constitutes the invasion of plaintiff's right of privacy under the common law and Article I, section One of the California Constitution.

WHEREFORE plaintiff prays for relief as set forth below.

FIFTH CAUSE OF ACTION

CALIFORNIA CIVIL CODE SECTIONS 51.7(A) AND 52

19. Plaintiff realleges and incorporates herein, by reference, paragraphs 1 through 9 inclusive, and paragraph 11.

20. All persons in California have the right to be free of violence or intimidation by threat of violence committed against their persons because of their race or sex as stated in California Civil Code section 51.7, Plaintiff is a black male, and alleges

1 that had he been a white male, or a female of any race, he would
2 not have been treated as he was by said peace officers. By their
3 above-described conduct, defendants have denied plaintiff his
4 rights to be free from violence or intimidation because of his
5 race or sex. Plaintiff has therefore been damaged in his civil
6 rights in violation of California Civil Code section 51.7.

7 21. Under section 52 of the California Civil Code plaintiff
8 is entitled to actual damages and \$10,000 for each violation of
9 section 51.7.

10 WHEREFORE plaintiff prays for relief as set forth below.

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SIXTH CAUSE OF ACTION

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ARTICLE I, SECTION 7 (A) AND THIRTEEN

OF THE CALIFORNIA CONSTITUTION

15 22. Plaintiff realleges and incorporates herein, by
16 reference, paragraphs 1 through 9 inclusive, and paragraph 11.

17 23. The above-described conduct of the defendants violated
18 the rights of plaintiff to be free from unreasonable searches and
19 seizures under Article I, Section 13 of the California
20 Constitution and his right not to be deprived of liberty without
21 due process of law under Article I, Section 7(a) of the California
22 Constitution. Plaintiff's property was seized and not returned
23 despite his request that the videocamera be returned.

24 WHEREFORE plaintiff prays for relief as set forth below.

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SEVENTH CAUSE OF ACTION

FOURTH AND FOURTEENTH AMENDMENTS

TO THE UNITED STATES CONSTITUTION

24. Plaintiff realleges and incorporates herein, by reference, paragraphs 1 through 9 inclusive, and paragraph 11.

25. The above-described conduct of the defendants violated the rights of plaintiff to be free from unreasonable searches and seizures, and from the use of excessive, unreasonable and unjustified force against his person, under the Fourth Amendment to the United States Constitution, as applied to the States under the Fourteenth Amendment to the United States Constitution.

WHEREFORE plaintiff prays for relief as set forth below.

EIGHTH CAUSE OF ACTION

42 U.S.C. SECTIONS 1983 and 1988

26. Plaintiff realleges and incorporates herein, by reference, paragraphs 1 through 25 inclusive.

27. Plaintiff claims damages for the injuries alleged herein under 42 U.S.C. section 1983 against the individual peace officers employed by the defendant City of Oakland, including those who are named herein as "D. KEELY, I. MAYER, Sgt. REILEY," for violation of his constitutional rights under color of law.

28. Plaintiff alleges on information and belief that prior to January 28, 2001, the City of Oakland developed and maintained policies or customs exhibiting deliberate indifference to the constitutional rights of persons in Oakland, which caused the above-described violation of plaintiff's rights.

1 29. Plaintiff alleges on information and belief that it is
2 the policy and custom of the City of Oakland to inadequately and
3 improperly investigate citizen complaints of police misconduct,
4 and acts of misconduct directed against black males especially
5 were instead tolerated by the City of Oakland.

6 30. Plaintiff alleges on information and belief that it is
7 the policy and custom of the City of Oakland to inadequately train
8 and supervise its police officers, including the defendant peace
9 officers herein, thereby failing to discourage further
10 constitutional violations on the part of its police officers. The
11 City of Oakland did not require appropriate in-service training or
12 re-training of officers who were known to have engaged in police
13 misconduct.

14 31. As a result of the above-described policies and
15 customs, police officers of the City of Oakland, including the
16 defendant peace officers, believed that their actions would not be
17 properly monitored by supervisory officers and that misconduct
18 would not be investigated or sanctioned, but would be tolerated.

19 32. The above-described policies and customs demonstrated
20 a deliberate indifference on the part of the policymakers of the
21 City of Oakland to the constitutional rights of the persons who
22 resided within Oakland, and were a cause of the violations of
23 plaintiff's rights alleged herein.

24 WHEREFORE plaintiff prays for relief as set forth below.

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NINTH CAUSE OF ACTION

CONSPIRACY

33. Plaintiff realleges and incorporates herein, by reference, paragraphs 1 through 32 inclusive.

34. Defendants conspired to commit the above-alleged deprivations of plaintiff's constitutional and other rights.

WHEREFORE plaintiff prays for relief as set forth below.

IV

PRAYER FOR RELIEF

WHEREFORE, plaintiff prays for judgment against all defendants and each of them as follows:

A. For general damages against all defendants jointly and severally in amount to be determined according to proof;

B. For special damages against all defendants jointly and severally in amount to be determined according to proof;

C. For punitive and exemplary damages against all individual defendants jointly and severally in amount to be determined according to proof;

D. For \$10,000 for each violation of California Code of Civil Procedure section 51.7;

E. For reasonable attorney fees and costs of suit:

F. For such other and further relief as the court may deem just and proper.

DATED: December 21, 2001

MICHAEL DEVIN
Attorney for Plaintiff